

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In Re: Ohio Valley University

Bk. No.: 22-00056

Debtor.

ORDER

On this day came the Trustee, Thomas H. Fluharty pursuant to the Trustee's "Motion to Sell Property Free and Clear of Liens and Notice of Upset Bid Procedures" (Doc. No. 34) filed herein on June 1, 2022 and the Trustee's "Notice of Public Sale of Property Free and Clear of Liens and Telephonic Auction" (Doc. No. 130) filed herein on September 23, 2022.

Whereupon the Trustee in support of his Motion represents as follows:

1. The debtor filed its voluntary chapter 7 petition on February 17, 2022. Schedule A/B of the petition, Part 55.2, lists various mineral interests which includes coal in numerous counties in West Virginia along with oil and gas interests.
2. The undersigned was appointed Trustee on February 17, 2022 and on March 1, 2022 (Doc. No. 9) designated the case as an asset case.
3. On June 1, 2022, the Trustee filed his Motion to sell certain real property assets described as coal interests in various counties in West Virginia for the sum of \$25,000.00.
4. By document filed on June 13, 2022 (Doc. No. 43) Cranehill Capital, LLC filed a Response to the Trustee's Motion by effectively making an upset bid of \$30,000.00.
5. On June 24, 2022 (Doc. No. 44) UMB Bank, N.A., in its capacity as successor Master

Trustee filed its objection to the Trustee's Motion to Sell the Property Free and Clear of Liens asserting a security interest in the proceeds of sale. Subsequently on August 12, 2022 (Doc. No. 89) the Trustee filed a "Motion to Compromise Estate's Interest" in the described coal properties by providing that the proceeds of sale would be shared equally between the Master Trustee and the Trustee with an Order (Doc. No. 122), authorizing the compromise.

6. On September 23, 2022, the Trustee filed a "Notice of Public Sale of Property Free and Clear of Liens and of Telephonic Auction," to be conducted on October 5, 2022 at 3:00 p.m., EST.

7. On October 5, 2022 at 3:00 p.m. EST the Trustee held a telephonic auction of the coal interests with the following in attendance: Tusc Land, LLC, Cranehill Capital, LLC, The Pullman Group and McCulliss Oil and Gas, Inc. At the start of the auction The Pullman Group determined not to participate indicating their primary interest to be in oil and gas properties.

8. A combined sale of the coal in all of the counties described in the Trustee's Motion was conducted. The properties were offered in \$5,000.00 increments. McCulliss Oil & Gas, Inc. dropped out after bidding reached \$50,000.00. Tusc Land, LLC. and Cranehill Capital, LLC. continued bidding at \$5,000.00 increments with Tusc Land, LLC. offering \$105,000.00 and Cranehill Capital, LLC offering \$100,000.00, as their final offers.

9. At the conclusion of the auction sale the high bidder was Tusc Land, LLC for the sum of \$105,000.00 and Cranehill Capital, LLC second high bidder at \$100,000.00.

10. The Trustee proposes to transfer the real property by deeds for each county, to Tusc Land, LLC. for the sum of \$105,000.00 and believes that the purchase price and the sale was fair and reasonable. The sale is free and clear of liens and encumbrances; any unpaid taxes will be the responsibility of the new owner; the new owner will pay transfer stamps and recording fees for each deed.

11. The buyers are not insiders of the debtor and the transaction represents an arms length transaction between the parties, made without fraud or collusion and no attempt has been made by either party to take any unfair advantage of the other. The transfer and sale of the property is being made free and clear of any interest in the property held by an entity other than the Estate pursuant to 11 U.S.C. §363 (f) because applicable non bankruptcy rule permits a sale of the property free and clear of such interests.

The Court does make accordingly the following findings of fact and conclusions of law:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. Venue is properly before this Court and this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (N) and (O).

2. The debtor filed a voluntary chapter 7 bankruptcy on February 17, 2022, with the Trustee being appointed on February 18, 2022.

3. The debtor is the sole owner of the property described herein.

4. The Motion to Sell Property Free and Clear of Liens and Notice of Upset Bid Procedures filed herein on August 1, 2022 and served upon creditors and other parties in interest fully complies with the notice requirements of Rule 6004 and 2002 of the Rules of Bankruptcy Procedure and meets the requirements of 11 U.S.C. §363 for the Sale of Assets Free and Clear of Liens and Encumbrances, and service of the motion is found to be sufficient. The upset bid procedures contained within the motion are approved.

5. The Notice of Public Sale of Property Free and Clear of Liens and of Telephonic Auction complies with the Trustee's motion to Sell Property Free and Clear of Liens and notice of

Upset Bid Procedures, and specifically the bid procedures described in the motion.

6. The Trustee has exercised his business judgment in determining to conduct an auction, and the sole objection to the Trustee's Motion has been resolved.

It is, accordingly, **ADJUDGED, ORDERED** and **DECREED** that the Trustee be and is hereby authorized to sell, the debtor's interest in coal assets described in the Motion to Sell to Tusc Land, LLC., for the sum of \$105,000.00, together with the authority to execute and deliver to the purchaser deeds conveying the property for the total sum of \$105,000.00.

It is, further, **ADJUDGED, ORDERED** and **DECREED** that the Trustee is authorized to distribute to UMB Bank, N.A., as Master Trustee the sum of \$52,500.00, in accordance with the earlier compromise herein and retain the balance until the further Order of the Court.

It is, further, **ADJUDGED, ORDERED** and **DECREED** that the 10 day stay imposed by FRBP 6004 is waived.

Submitted by:

/s/ Thomas H. Fluharty
Thomas H. Fluharty, Trustee
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